

REMARKS

Claims 1-12 remain pending in this patent application.

PRIOR ART REJECTION

Claims 1-12 (stated on page 2 of the outstanding Office Action as "claims 1-8") were rejected under 35 USC § 103(a) as being unpatentable over US 4503002 (Klebe et al.) and DE 1 163 784 (Schutte et al.) in view of US 6103004 (Belligoi et al.). Applicant traverses this rejection insofar as it might be deemed applicable to any of claims 1-12 as now presented.

As Applicant observed on page 6 of the Amendment filed in this application on December 11, 2006, in the Klebe et al. process and apparatus, the reaction waste gases, consisting of hydrophobized silica, dimethyldichlorosilane, hydrogen chloride, nitrogen and steam are returned via line 13 and introduced to the suction side line of the conveying apparatus 7. On the other hand, in Applicant's disclosed and claimed inventive apparatus, the hydrophobic silica fine powder which flies out of both the hydrophobizing and deacidifying sections of the fluidization vessel is collected by the second cyclone and the second filter, and the thus-collected hydrophobic silica is returned to the deacidifying section or device. Applicant's apparatus is therefore significantly different from the Klebe et al. apparatus. Because the hydrophobic silica collected and returned via line 13 in the Klebe et al. apparatus is repeatedly treated with a hydrophobizing agent such as dimethyldichlorosilane, the yield of hydrophobic silica in the Klebe et al. apparatus will be inferior to the yield of hydrophobic silica in Applicant's disclosed and claimed apparatus.

In response to the foregoing argument, the Examiner noted that the claims used "comprising" for the enumerated elements of the claimed apparatus. Without acquiescing in the rejection, Applicant is amending the introductory language in independent claims 1, 2 and 9 to recite "consisting essentially of" instead of "comprising." According to the guidelines and case law presented in MPEP 2111.03, "consisting essentially of" may be regarded as limiting the claims to the recited elements and those that do not materially affect the claimed invention. Applicant submits that, in the disclosed operation of the Klebe et al. apparatus, the return of reaction waste gases, including dimethyldichlorosilane, hydrogen chloride, nitrogen and steam,

to the suction side line of the conveying apparatus, along with hydrophobized silica, is materially different from the function attributed to "a second cyclone and a second filter" in Applicant's claims 1 and 2 and "a conduit network" in Applicant's claim 9.

Each of Applicant's claims 1, 2 and 9, calls for elements that effect the return of the collected hydrophobic silica to the deacidifying section or device of a fluidization vessel. The Examiner characterizes the Klebe et al. apparatus as including a "conduit network providing a flow path for returning hydrophobic silica collected by the second cyclone and/or the second filter to the deacidifying section or the device for removing halogen gas." Applicant submits that this characterization of the Klebe et al. apparatus is at odds with the disclosure in Klebe et al., which tells us that both hydrophobization and deacidification of the silica are conducted in the fluidized bed reactor 11. Applicant submits that there is no identifiable feature of the Klebe et al. apparatus that can be fairly equated with Applicant's claimed deacidifying section. There is, then, no deacidifying section in the Klebe et al. apparatus to which collected hydrophobic silica is returned. As observed by the Examiner, Schutte et al. contains an oblique reference to separate zones for deacidification and dehydration treatment in the prior art. Applicant submits, however, that a fair reading of this "disclosure" in Schutte et al. cannot fairly form a basis for imputing to the Klebe et al. apparatus a deacidifying section that receives collected hydrophobic silica.

The Examiner concedes that the Klebe et al. apparatus does not employ filters. As a remedy for this deficiency of Klebe et al./Schutte et al. vis-à-vis the requirements of Applicant's claims, the Examiner proposes providing "filters along with the cyclones in the device of Klebe et al." As a basis for this modification of the Klebe et al. apparatus, the Examiner cites the disclosure in Belligoi et al. In particular, the Examiner cites two passages in Belligoi et al. as a basis for the proposed modification of the Klebe et al. apparatus. The first cited passage in Belligoi et al., column 2, lines 19-23 (should have been identified as column 1, lines 19-23, discusses a known matting agent attained by agglomerating pyrolytic silica. The second cited passage in Belligoi et al., column 2, lines 33-40, is part of a paragraph that discusses the inventive process of obtaining a silica matting agent from a micronized silica gel suspended in water. In the inventive process, the water of the formed suspension is evaporated in a hot counter current air stream. Then, the remaining solid aggregates are removed from the air stream using a

cyclone followed by a filter. Obviously, this process of obtaining silica is quite different from the process carried out in the Klebe et al. apparatus, which begins with pyrogenically produced silica. Applicant submits that the application of the Belligoi teachings to the Klebe et al. apparatus, as proposed by the Examiner, would have been counterintuitive, not to mention unobvious.

In the paragraph bridging pages 3-4 of the outstanding Office Action, the Examiner states that Applicant's arguments vis-à-vis the rejection stated in the September 11, 2006 Office Action were found persuasive. Applicant submits that these arguments are equally applicable to the Klebe et al. and Schutte et al. disclosures, as employed by the Examiner in the rejection stated in the outstanding Office Action. For reasons presented above, Applicant submits that the disclosure in Belligoi et al. cannot be reasonably viewed as provided a remedy for deficiencies in the Klebe et al. and Schutte et al. disclosures vis-à-vis the requirements of Applicant's claims.

In view of the foregoing observations, Applicant submits that no reasonable combination of the disclosures in Klebe et al., Schutte et al. and Belligoi et al. can properly serve as a basis for rejecting independent claims 1, 2 and 9, or dependent claims 3-8 and 10-12, as now presented, under 35 USC § 103(a).

CONCLUSION

In view of the amendments, observations and arguments presented herein, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection stated in the outstanding Office Action and recognize all of the pending claims as allowable.

If unresolved matters remain in this application, the Examiner is invited to contact Frederick R. Handren, Reg. No. 32,874, at the telephone number provided below, so that these matters can be resolved expeditiously.

Application No. 10/797,037
Amendment dated July 5, 2007
Reply to Office Action of March 9, 2007

Docket No.: 0171-1068P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: July 5, 2007

Respectfully submitted,

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